



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2022-0795]

RIN 1625-AA08

### Special Local Regulation; Eureka Concert Spectator Area, Eureka Channel, Eureka, CA

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary local regulation for the navigable waters of Eureka Channel, in the vicinity of Woodley Island, in support of an onshore concert with spectator vessels. This special local regulation is necessary to protect the safety of life on these navigable waters and to ensure the safety of mariners transiting the area from the dangers associated with the large gathering of on water concert spectators. This special local regulation will temporarily establish the spectator area and safe access lane to be used for transit and emergency response access. This regulation is necessary to provide safety of life on the navigable waters during the event, which will be held on October 16, 2022.

**DATES:** This rule is effective on October 16, 2022 from 11 a.m. until 7 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG 2022-0795 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT William Harris, Waterways Management, U.S. Coast Guard; telephone (415) 399-7440, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it would be impracticable to do so. This rule must be effective on October 16, 2022, so we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because the rule must be effective on October 16, 2022, to ensure the safety of the participants and vessels during the Concert Event.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041

(previously 33 U.S.C. 1233). The Captain of the Port Sector San Francisco (COTP) has determined that potential hazards associated with a large gathering of on water concert spectators on October 16, 2022, will be a safety concern for anyone within the Eureka Channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation while the event is taking place.

#### **IV. Discussion of the Rule**

This rule establishes a special local regulation from 11 a.m. until 7 p.m. on October 16, 2022. This special local regulation involves a designated event anchorage in the vicinity of Woodley Island Marine. The event anchorage area will be established from a point along the southeastern shore of Woodley Island at 40°48'34.5"N, 124°9'19.7"W; thence along the Samoa Bridge to 40°48'30.3"N, 124°9'15.7"; thence along the shore to 40°48'24.2"N, 124°9'30.6"W; thence to 40°48'29.4"N, 124°9'32.8"W and thence to the point of beginning. No vessel may moor or anchor within 50 yards of the southernmost shoreline to allow access for emergency vessels. This special local regulation also involves a no loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore of Woodley Island at 40°48'28.0"N, 124°10'0.0"W; thence along the shore to 40°48'29.4"N, 124°9'32.8"W; thence to 40°48'24.2"N, 124°9'30.6"W; thence along the shore to 40°48'21.9"N, 124°9'59.9"W and thence to the point of beginning.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and the time-of-day of the special local regulation. This special local regulation would impact a small designated area of the Eureka Channel for a short duration. Moreover the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This special local regulation involves a designated event anchorage from a point along the southeastern shore of Woodley Island at 40°48'34.5"N, 124°9'19.7"W; thence along the Samoa Bridge to 40°48'30.3"N, 124°9'15.7"; thence along the shore to 40°48'24.2"N, 124°9'30.6"W; thence to 40°48'29.4"N, 124°9'32.8"W and thence to the point of beginning. This special local regulation also involves a no loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore of Woodley Island at 40°48'28.0"N, 124°10'0.0"W; thence along the shore to 40°48'29.4"N, 124°9'32.8"W; thence to 40°48'24.2"N, 124°9'30.6"W; thence along the shore to 40°48'21.9"N, 124°9'59.9"W and thence to the point of beginning. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum For Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-113 to read as follows:

#### **§ 100.T11-113 Special Local Regulation; Eureka Concert Spectator Area, Eureka Channel, Eureka, CA.**

(a) *Regulated area.* This special local regulation involves a designated event anchorage from a point along the southeastern shore of Woodley Island at 40°48'34.5"N, 124°9'19.7"W; thence along the Samoa Bridge to 40°48'30.3"N, 124°9'15.7"; thence along the shore to 40°48'24.2"N, 124°9'30.6"W; thence to 40°48'29.4"N, 124°9'32.8"W and thence to the point of beginning. No vessel may moor or anchor within 50 yards of the southernmost shoreline to allow access for emergency vessels. This special local regulation also involves a no-loitering zone to reduce congregating in Eureka Channel during this concert event from a point along the southwestern shore of Woodley Island at 40°48'28.0"N, 124°10'0.0"W; thence along the shore to 40°48'29.4"N, 124°9'32.8"W; thence to 40°48'24.2"N, 124°9'30.6"W; thence along the shore to 40°48'21.9"N, 124°9'59.9"W and thence to the point of beginning.

(b) *Definitions.* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* All attendees are allowed to anchor within the designated event anchorage and are restricted from remaining within the regulated no-loitering area described in paragraph (a) of this section unless authorized by the Captain of the Port San Francisco or their designated representative.

(2) To seek permission to access or for inquiries, contact the COTP or the COTP's representative by VHF Channel 22A (157.100 mhz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 11 a.m. to 7 p.m. on October 16, 2022.

Dated: October 7, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard,  
Captain of the Port San Francisco.

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